

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

JOHN BURTON,

Petitioner,

vs.

MAGGIE MILLER-STOUT,

Respondent.

NO. CV-11-195-JLQ

ORDER TO DISMISS FIRST AMENDED  
PETITION

BEFORE THE COURT is Petitioner's First Amended Petition (ECF No. 9).  
Petitioner, a prisoner at the Airway Heights Corrections Center, is proceeding *pro se* and  
*in forma pauperis*; Respondent has not been served.

An amended petition supercedes the original petition, *Forsyth v. Humana, Inc.*, 114  
F.3d 1467, 1474 (9th Cir.1997); *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.1987).

Therefore, "[a]ll causes of action alleged in an original [petition] which are not alleged in  
an amended [petition] are waived." *King*, 814 F.2d at 567 (*citing to London v. Coopers &*  
*Lybrand*, 644 F.2d 811, 814 (9th Cir.1981)); *accord Forsyth*, 114 F.3d at 1474.

Therefore, **IT IS ORDERED** the District Court Executive shall **ADD** Respondent  
Maggie Miller-Stout and **TERMINATE** Respondent State of Washington.

Mr. Burton is challenging his 2007 Spokane County jury conviction for delivery of  
a controlled substance, to wit crack-cocain. He was sentenced to nine and a half years  
incarceration. In his amended petition, Mr. Burton provides no information regarding

1 any direct appeal or petition for state collateral review he may have filed. A review of  
2 Washington State court records shows the Washington State Supreme Court denied  
3 review of his direct appeal on March 4, 2009. He did not seek *certiorari* in the United  
4 States Supreme Court, and therefore, direct review of his conviction concluded on June 2,  
5 2009. *Summers v. Schriro*, 481 F.3d 710, 717 (9th Cir.2007). The one-year statute of  
6 limitations under 28 U.S.C. § 2244(d)(1)(A) commenced on that date.

7 Although granted the opportunity to do so, Petitioner has presented no facts  
8 showing he is entitled to statutory tolling under 28 U.S.C. § 2244(d)(2). He presents no  
9 facts warranting equitable tolling of the limitations period. *Holland v. Florida*, — U.S.  
10 —, —, 130 S.Ct. 2549, 2562, 177 L.Ed.2d 130 (2010). Therefore, Petitioner's  
11 failure to file a federal habeas corpus petition by June 2, 2010, renders the present  
12 petition time-barred.

13 Accordingly, **IT IS ORDERED** Mr. Burton's First Amended Petition (ECF No. 9)  
14 shall be **DISMISSED with prejudice**.

15 **IT IS SO ORDERED.** The District Court Executive is directed to enter this  
16 Order, enter judgment of dismissal of the Petition with prejudice, forward a copy to  
17 Petitioner, and close the file. The court further certifies that pursuant to 28 U.S.C. §  
18 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no  
19 basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R.App.  
20 P. 22(b).

21 **DATED** this 8<sup>th</sup> day of September 2011.

22 s/ Justin L. Quackenbush  
23 JUSTIN L. QUACKENBUSH  
24 SENIOR UNITED STATES DISTRICT JUDGE